

EAGLE COUNTY OPEN RECORDS POLICY

I. PURPOSE

It is the policy of the Eagle County Board of County Commissioners (“Board of County Commissioners”) that all public records shall be open to inspection by any person at reasonable times, except as provided by the Colorado Public Records Act (the “Act”), or as otherwise specifically provided by law. In all cases where a person has the right to inspect a public record, the person may request a copy, printout or photograph of the record.

The Act authorizes a custodian of records to make rules and regulations regarding the disclosure and inspection of public records as are reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian’s office. Consequently, it is important that all requests be carefully evaluated to determine what records can be provided to the requesting party in compliance with Colorado law.

The purpose of the Eagle County Open Records Policy (the “Policy”) is to set forth a general guideline for use by persons requesting public records, and for use by Eagle County (the “County”) staff in responding to such requests. In addition to this Policy, the custodian in any County department may, following approval by the County Manager, establish a more specific policy as may be necessary under certain circumstances for the protection of particular records and for the prevention of unnecessary interference with the regular discharge of the duties of the custodian. Elected officials may also develop their own policies and procedures regarding public records in their custody. For example, the Eagle County Clerk and Recorder’s office has a specific policy dealing with requests for ballots when made in proximity to elections.

This Policy and the fees set forth herein shall apply to all requests for public records except where a County department or an elected official has established a specific policy for the protection of particular records and which modifies or eliminates the established fees. In the event of a conflict between this Policy and the specific policy of a County department or an elected official with regard to the fees which can be charged by the County when responding to a request for records, the higher amount will apply.

To the extent the County has custody of any public records of an elected official, the County will, in consultation with that elected official, meet any requirements of the Act as may apply to documents in the County’s possession. See Section III.A.5, below, for a list of the departments or elected officials who have specific statutes which pertain to their records.

This Policy is subject to interpretation by the Eagle County Attorney’s Office, and exceptions may be made in individual circumstances in its sole discretion. As Colorado law changes, this Policy and process will be amended. For the complete Act, *see* C.R.S. § 24-72-201 *et seq.*

II. DEFINITIONS

The definitions contained in C.R.S. § 24-72-201 *et seq.*, as amended from time to time, shall apply to this Policy unless the context clearly requires a different meaning. Two definitions of particular relevance are set forth below:

- “Public Records” means and includes “all writings made, maintained, or kept by . . . any political subdivision . . . for use in the exercise of functions required or authorized by law . . . or involving the receipt or expenditure of public funds.” C.R.S. § 24-72-202(6).
- “Writings” means and includes “all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics. ‘Writings’ includes digitally stored data, including without limitation electronic mail messages, but does not include computer software.” C.R.S. § 24-72-202(7).

III. PROCEDURE

The following procedure shall apply to all open records requests, except where a more specific policy of a County department or an elected official controls. Please review this Policy in its entirety before submitting an open records request.

A. REQUESTS

1. Form. An open records request shall be in writing on the County Records Request Form that you can download and email or the Open Records Request Google Form that you can fill out as a link available on the webpage (collectively referred to as the “Form”). The written request shall contain at least the following information:

- the requestor’s name;
- name of organization, if any;
- mailing address or email address;
- phone number; and
- a concise detailed description of the records requested.

Eagle County devised the Form to ensure all required information is provided to assist in the efficient and timely handling of records requests. Requests not made on the Form will be rejected. If a request is made verbally, the requestor will be asked to put his/her request on the Form. As a general rule, the more specific the request, the more likely the custodian will be able to locate available records that respond to the request, and the more likely fees will be less. For any request that is broad or vague, the custodian may require the requestor to provide a more specific request. A copy of or link to the Form is located on the Eagle County CORA webpage found in the Open Eagle County tab at www.eaglecounty.us/openeaglecounty. Or you may contact the County Attorney’s Office for a downloadable form.

2. Submission. An open records request Form shall be submitted by email to cora@eaglecounty.us or through the Open Records Request Google Form link available on the Eagle County CORA webpage found in the Open Eagle County tab at www.eaglecounty.us/openeaglecounty. Both of these options funnel all submissions to the Eagle County records custodian. The County will not require a requester to provide any form of identification unless otherwise required by law.

3. Transmission to Eagle County Records Custodian. Upon receipt of a written request for records, the recipient shall make a notation on the request stating the date it was received and shall immediately deliver or email a copy of the request to the custodian of the records in the applicable department. Department heads are the official custodians of all records maintained within their departments. The Eagle County Clerk and Recorder is the official custodian of all records recorded in the grantor/grantee index maintained by that Office. The request may be assigned to an attorney for review and determination as to whether the requested records are (a) not subject to disclosure; (b) subject to disclosure which requires redaction of certain information; or (c) subject to full disclosure. The County Attorney's Office will notify the custodian as to the appropriate response, and the custodian of records, or his or her designee, will compile the available records and either produce the responsive requested records or provide the records to the County Attorney's Office for response.

4. Location of Records. Eagle County has made a considerable effort to be transparent to its constituency by making an abundance of records available for review on the website. The Eagle County CORA webpage provides a number of links. Additionally, the Board of County Commissioners' and Planning Commissions' webpages provide links to their meeting information.

As to records not readily available on the Eagle County website, if the public records requested are not in the custody or control of the department or person to whom the request is made, the custodian shall immediately notify the assigned attorney so that he/she can notify the requestor of this fact, in writing. The notification shall state in detail to the best of the custodian's knowledge the reason the records are not in the custody or control of the particular department; the location of the records; and/or what person/department has custody or control of the requested records. C.R.S. § 24-72-203(2)(a). If the custodian has custody of correspondence sent to or received by an elected official, the custodian shall consult with the elected official and the assigned attorney prior to allowing inspection of the correspondence for purposes of determining whether the correspondence is a public record. C.R.S. § 24-72-203(2)(b).

5. Additional Rules Affecting Other Departments. Please be advised that the following offices and departments handle open records requests directed to their particular departments, and additional laws and regulations may pertain to their records.

- Eagle County Sheriff's Office. Requests for records maintained by the Sheriff's Office should be submitted in writing to: 0885 E Chambers Avenue, P.O. Box 359, Eagle, CO 81631; fax: (970) 328-1447. Criminal justice records are governed by the Criminal Justice Act, C.R.S. § 24-72-301, *et seq.*

- Eagle County Department of Human Services (“DHS”). Requests for records maintained by and the Department of Human Services should be submitted in writing to: 551 Broadway, P.O. Box 660, Eagle, CO 81631; fax: 855-848-8828. Department of Human Services records are subject to additional legal protections under state and federal law. Please contact DHS to inquire about particular forms which DHS may utilize for document requests.

B. TIMING FOR ACCESS TO OR PRODUCTION OF PUBLIC RECORDS

In all cases in which a person has the right to inspect a public record, the person may request a copy, printout or photograph of the record. Physical inspection of available records is not required, and a requestor may decide an inspection is not necessary when he/she knows with certainty what records it wants produced and copied. However, there may be other situations in which a requestor wants to inspect available records in advance of or in lieu of receiving copies. When it is possible for a requestor to inspect public records in advance of or in lieu of receiving copies, and it is possible to permit inspection without creating a copy or printout of the public record, County staff will facilitate such inspection. Otherwise, County staff shall furnish a copy, printout or photograph as set forth herein and may charge a fee as set forth in Section III.D., below. To assist County staff in responding to a request, a requestor should state in its request whether it wants to schedule an inspection of available records, or whether it wants copies of available records in lieu of inspection. County staff shall furnish a copy, printout or photograph as set forth herein and may charge a fee as set forth in Section III. D., below.

1. Time for Inspection or Production of Records – Three (3) Working Days. If records are available pursuant to C.R.S. § 24-72-201, the requestor will be notified as to the date when the requested records will be available for inspection or production. The typical time for inspection or production of available records shall be three (3) working days beginning on the first working day after a request which complies with the requirements of Section III.A.1 above is received. If the requested records are in the custody and control of the person to whom the request is made but are in active use, in storage, or otherwise are not readily available at the time the requestor asks to examine them or requests copies of them, the requestor will be notified of this fact in writing.

2. Seven Working Day Extension of Time. The three-working day period of time for inspection or production of records may be extended for an additional seven (7) working days if the County Attorney’s Office determines that extenuating circumstances exist which prevent the inspection or production of available records within the initial three-working day period described above. The requestor shall be notified in writing of the basis for the extenuating circumstances and the resulting extension within the initial three-working day period. An extension of time is not available for a request that relates to a single, specifically identified document. C.R.S. § 24-72-203(3)(b).

Extenuating circumstances shall be found to exist when:

- A broadly stated request is made that encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the custodian reasonably to prepare or gather the records within the initial three-working day period; or

- A broadly stated request is made that encompasses all or substantially all of a large category of records and the agency is unable to prepare or gather the records within the three-working day period because the agency needs to devote all or substantially all of its resources to meeting an independent deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or
- A request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-working day period without substantially interfering with the custodian's obligations to perform his or her other public service responsibilities.

If a request is too broad, speculative or voluminous to respond to within ten (10) working days (initial three days plus seven-day extension), the County may request relief from the Court, including attorney's fees as provided for by law.

C. INSPECTION AND COPYING OF RECORDS

1. Inspection. If the requestor wishes to inspect available records in advance of or in lieu of purchasing copies of such records, such inspection shall be by appointment only during normal business hours (Monday – Friday, 8:00 a.m. – 5:00 p.m.) at the office of the custodian of records, unless the County Attorney's Office deems it appropriate for the inspection to take place in another County department. The original records shall not be removed from the custodian's office.

2. Electronic Records Inspection. When records are paperless and not accessible from public online websites or public work stations, including but not limited to electronic mail and other digitally stored data, inspection without printing out copies is not possible. In such cases, the requestor will be informed and can opt for print out copies and will be charged a fee as set forth in Section III.D., herein.

3. Copies of Records. Upon request for records by a person seeking a copy of any public record subject to disclosure, county staff shall transmit a copy of the record by U.S. Mail unless the copy is available in digital format in which case it will be transmitted via electronic mail or by other mutually agreed upon transmission method if the size of the record is too large to be transmitted by electronic mail. Any digitally available copy that is available in a searchable format will be transmitted in a searchable format and will not be converted to a non-searchable format before transmission if technologically feasible. Within three (3) working days beginning on the first working day after a request which complies with the requirements of Section III.A.1 above is received, county staff shall notify the requestor that copies of the records subject to disclosure are available, but that the records will only be sent to the requestor once county staff receives payment for all costs associated with records and for all other fees lawfully allowed, unless recovery of all or any portion of such costs or fees has been waived by the custodian. Upon receiving payment in full, the custodian shall send the available record(s) to the requestor as soon as practicable, but not more than three (3) working days after receipt of full payment. C.R.S. § 24-72-205. In the event the requestor conducts an inspection as set forth above and requests copies of available records at the time of such inspection, the requestor must mark with tabs or clips the pages that he

or she wants copied. Copies may be made at a later date and time, based on volume and staff availability. In such case, the requestor will be notified when the copies are available for pick-up. Copies of available records may be also be transmitted as set forth herein upon request.

4. Outside Copiers or other Devices. If the custodian determines that it does not have the facilities for making a copy, printout or photograph of a record that a person has a right to inspect, the person shall be granted access to the record for the purpose of making a copy, printout or photograph. The copy, printout or photograph shall be made while the record is in the possession, custody and control of the custodian thereof and shall be subject to the supervision of the custodian. The custodian may establish a reasonable schedule of times for making a copy, printout or photograph, and may charge the same fee for the services rendered insupervising the copying, printing out or photographing as the custodian may charge for furnishing a copy, printout or photograph under Section III.D.1. hereof.

D. Fees for Inspection and Copying of Records

A substantial amount of public records related to Eagle County are available for review free of charge on the County website. These records include, but are not limited to budgets, agendas, minutes of the meetings of the Board of County Commissioners, parcel maps, resolutions, contracts and other information.

Where a person wants to inspect and/or request copies of available records, the following fee schedule shall apply.

1. Copy, printout or photograph.

- The fee for a copy, printout or photograph shall be \$0.25 per standard page (8 ½ x 11). For documents in non-standard format (larger than 8 ½ x 11), the actual cost of providing a copy, printout or photograph of the record will be charged. For example, at this time, the cost of a 2'x3' sheet is \$10.00. Where the fee for a certified copy or other copy, printout, or photograph of a record is specifically prescribed by law, the specific fee shall apply.
- In addition to the \$0.25 per page fee, the requestor may be charged a reasonable research and retrieval fee based on the actual cost of responding to the request, including staff time of gathering, preparing, reviewing, redacting to excise privileged material, and copying available documents. No fee will be imposed for the first hour of time expended in connection with the research and retrieval. After the first hour, a fee of \$33.58 per hour will be charged for each additional hour expended in connection with the research and retrieval.
- In the case of a request for a computer printout (other than a document which can be printed via word processing) the fee may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system.

2. Manipulation of Data. Please note that Eagle County is not obligated to manipulate data in response to a request in order to generate a record in a form not used by the County. However, if the County elects to do so in response to a specific request, the custodian may charge the requestor a reasonable hourly fee associated with the request. The fee shall not exceed the actual cost of manipulating the data and generating the record in accordance with therequest. Persons making subsequent requests for the same or similar records may be charged afee not in excess of the original fee.

3. Transmission of Records. Upon request, and after receipt of payment in full for the requested records, county staff may mail the requested copies of the records subject to disclosure via U.S. Mail unless the copy is available in digital format in which case it will be transmitted via electronic mail or by other mutually agreed upon transmission method if the size of the record is too large to be transmitted by electronic mail. In such case, the requestor will be required to prepay the cost of the mailing. No transmission fees will be charged to the record requestor for transmission of public records via electronic mail.

4. Notice of Fees. The requestor will be notified in advance of the types of fees outlined above. If a request involves voluminous research or records, the requestor may wish to request an estimate of the full cost to produce the records. The County will not commence work to assemble a response to a request without prior written approval from the requestor. For requests involving voluminous research or records, a deposit of 50% of the estimated cost of the work will be collected before work will start.

5. Reduction or Waiver of Fees. In certain circumstances, and depending on the nature of the request, the fees set forth in this Section III.D. may be reduced or waived with prior approval of the County Attorney. For example, if a response to the request requires minimal staff time and the requested public records are to be used for a public purpose, including public agency program support, nonprofit activities, journalism or academic research, a fee reduction orwaiver may be appropriate. To request consideration of a fee waiver or reduction, please contactthe specific custodian of the County department to whom you are directing your open records request. The custodian will forward the request to the County Attorney’s office for review. Fee reductions and waivers shall be uniformly applied among persons similarly situated. A fee reduction or waiver for one request does not guarantee future reductions or waivers.

6. Payment. The County cannot bill for fees relating to open records requests. Full payment for the applicable fees outlined above, including transmission fees, must be remitted to the County before copies of the available records will be released to the requestor. Payment may be made by check or debit/credit card, which may be made in person or via electronic payment over the phone. A convenience fee of 2.5% with a minimum of \$2.00 will be added on debit/credit card transactions.

E. DENIAL OF INSPECTION OF RECORDS

A denial of inspection must be specific and can only be based on reasons set forth in the Colorado Open Records Act.

1. Contrary to Statute or Court Order. A requestor will be denied the right of inspection if:

- Inspection would be contrary to any state statute; or
- Inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or
- Inspection is prohibited by rules promulgated by the Supreme Court or by the order of any court.

2. Contrary to Public Interest. Inspection of the following records may be denied on the grounds that disclosure would be contrary to the public interest:

- Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any law enforcement purpose. C.R.S. § 24-72-204(2)(a)(I).
- Test related data pertaining to administration of a licensing exam, exam for employment, or academic exam. *See* C.R.S. § 24-72-204(2)(a)(II).
- Details of bona fide research projects of state institutions. C.R.S. § 24-72-204(2)(a)(III).
- Contents of real estate appraisals relative to acquisition (not sale) of property for public use until title passes to Eagle County. C.R.S. § 24-72-204(2)(a)(IV).
- Market analysis generated by the Department of Transportation's bid analysis and management system for the confidential use of the department for awarding contracts or for the purchase of goods or services and any documents prepared for the bid analysis and management system. C.R.S. § 24-72-204(2)(a)(V).
- Records and information relating to the identification of persons filed with, maintained by, or prepared by the Department of Revenue pursuant to C.R.S. §§ 42-2-121 & 24-72-204(2)(a)(VI).
- Electronic email addresses, home addresses, or telephone numbers provided by a person to Eagle County for purposes of future electronic communications to the person from the agency, institution, political subdivision or elected official. C.R.S. § 24-72-204(2)(a)(VII).
- Details of security arrangements or investigations. C.R.S. § 24-72-204(2)(a)(VIII).

If the right of inspection of any records set forth above is granted to any news agency, it shall be allowed to all such news agencies.

3. Personal Information. Inspection of the following records *shall* be denied, unless otherwise provided by law, or unless requested by the person in interest:

- Medical, mental health, sociological, or scholastic achievement data on individuals. C.R.S. § 24-72-204(3)(a)(I).
- Personnel files, except that such files are available to the person in interest and to the elected and appointed officials who supervise that person's work. C.R.S. § 24-72-204(3)(a)(II).

- Letters of reference (not available to the person in interest if they concern employment, licensing or the issuance of permits). C.R.S. § 24-72-204(3)(a)(III).
- Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number, furnished by or obtained from any person. C.R.S. § 24-72-204(3)(a)(IV).
- Addresses and telephone numbers of students in any public elementary or secondary school. C.R.S. § 24-72-204(3)(a)(VI).
- Library records identifying users. C.R.S. § 24-72-204(3)(a)(VII).

In addition to the above-described documents, the Act provides specific and detailed circumstances for the denial of, or limited release of, records related to:

- Records concerning sexual harassment complaints and investigations, except for certain records of sexual harassment complaints made against an elected official and the results or report of investigations regarding alleged sexual harassment by an elected official if the investigation concludes that the elected official is culpable for any act of sexual harassment. *See* C.R.S. § 24-72-204(9).
- Records of applicants for an executive position at Eagle County.
- Records protected by common law privileges such as the governmental or “deliberative privilege”, the deliberative process privilege, work product privilege, or attorney-client privilege. If a record is withheld pursuant to the deliberative process privilege, the custodian shall provide the requestor with a sworn statement specifically describing each document withheld, explaining why each document is privileged and why disclosure would cause substantial injury to the public interest. *See* C.R.S. §§ 24-72-204(3)(a)(X)(XI) and (XIII).

4. Substantial Injury to Public Interest. The official custodian of any public record may petition the Eagle County District Court for an order permitting him or her to restrict disclosure of records otherwise available to public inspection if disclosure would do substantial injury to the public interest. C.R.S. § 24-72-204(6).

5. Denial of Request. If inspection of public records is denied, the requestor may request a written statement of the grounds for the denial. The statement shall cite the law or regulation which is the basis for the denial and shall be furnished forthwith to the requestor.

F. CLOSED REQUEST

An open records request will be deemed closed under any of the following circumstances:

1. Following Inspection. After records made available for inspection have been inspected by the requestor and no copies of the records are requested.

2. Copies Provided. After records made available for inspection have been inspected by the requestor and copies of the records have been provided consistent with this Policy.

3. Failure to Inspect or Pay. In the event a requestor does not make arrangements for review of documents within ten (10) working days after being contacted by Eagle County for

such purpose, fails to appear for a scheduled review, fails to prepay a deposit for the cost of research or records or fails to pay the total of all costs within ten (10) working days of notification of the availability of records.

4. Request Closed. A person whose request has been closed under this Section F and who still wishes to inspect the same records must submit a new request.